

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MONSTER ENERGY COMPANY,

Plaintiff,

v.

THE PARTNERSHIPS and
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A”,

Defendants.

Case No. 24-cv-07529

Judge Jeremy C. Daniel

Magistrate Judge Jeffrey T. Gilbert

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S MOTION FOR ENTRY OF
A PRELIMINARY INJUNCTION AS TO CERTAIN DEFENDANTS**

Monster Energy Company (“Plaintiff” or “MEC”) submits this Memorandum of Law in support of its Motion for Entry of a Preliminary Injunction as to Defendant Nos. 22-54.

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiff Monster Energy Company (“Plaintiff” or “MEC”) brings the present action against the defendants identified on Schedule A to the Complaint (collectively, the “Defendants”) for federal trademark infringement and counterfeiting (Count I), false designation of origin (Count II), and copyright infringement (Count III). As alleged in Plaintiff’s Complaint [1], the Defendants are promoting, advertising, distributing, offering for sale, and selling products using infringing and counterfeit versions of Plaintiff’s federally registered trademarks, unauthorized copies of Plaintiff’s federally registered copyrighted works, or both (collectively, the “Unauthorized Monster Energy Products”) through various fully interactive e-commerce stores¹ operating under the seller aliases identified in Schedule A to the Complaint (collectively, the “Seller Aliases”).

II. STATEMENT OF FACTS

On August 28, 2024, this Court granted Plaintiff’s *Ex Parte* Motion for Entry of a Temporary Restraining Order (“the TRO”). [24]. The TRO authorized Plaintiff to provide notice of these proceedings and the preliminary injunction hearing by electronically publishing a link to the Complaint, this Order and other relevant documents on a website and by sending an e-mail with a link to said website to an email address for each Defendant. [24] at ¶ 7. Since and pursuant to entry of the TRO, financial accounts associated with Defendant Nos. 22-54 have been frozen. *See* Declaration of Quinn B. Guillermo (hereinafter, “Guillermo Declaration”) at ¶ 2.

Plaintiff respectfully requests that this Court convert the TRO to a preliminary injunction against Defendant Nos. 22-54, so that they remain enjoined from the manufacture, importation,

¹ The e-commerce urls are listed on Schedule A to the Complaint under the Online Marketplaces.

distribution, offering for sale, and sale of Counterfeit Products during the pendency of this litigation. As part of the Preliminary Injunction, Plaintiff requests that that Defendants' financial accounts remain frozen until completion of these proceedings.

III. ARGUMENT

A. A Preliminary Injunction Extending Relief Already Granted in the TRO Is Appropriate

Plaintiff respectfully requests that this Court convert the TRO to a preliminary injunction to prevent further unlawful conduct by Defendants. Courts addressing similar allegations of Internet-based counterfeiting have also issued preliminary injunctions following a temporary restraining order. *See, e.g., Deckers Outdoor Corp. v. The P'ships*, No. 15-cv-3249 (N.D. Ill. May 6, 2015) (unpublished).

i. This Court Has Already Found that the Requirements for a Preliminary Injunction Have Been Satisfied

Since the standard for granting a TRO and the standard for granting a preliminary injunction are identical in this Circuit, the requirements for entry of a preliminary injunction extending the TRO have been satisfied. *See, e.g., Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, No. 1:01-cv-00905, 2001 WL 527404, at *1 (N.D. Ill. May 15, 2001) (citations omitted). A temporary restraining order or preliminary injunction may be issued upon a showing that: "(1) there is a reasonable likelihood that Plaintiff will succeed on the merits; (2) Plaintiff will suffer irreparable injury if the order is not granted because there is no adequate remedy at law; (3) the balance of hardships tips in Plaintiff's favor; and (4) the public interest will not be disserved by the injunction." *Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1076 (N.D. Ill. 1996). By virtue of this Court's entry of the TRO, it has already found that the above requirements have been satisfied.

ii. The Equitable Relief Sought Remains Appropriate

The Lanham Act authorizes courts to issue injunctive relief “according to principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark” 15 U.S.C. § 1116(a).

To prevent the Defendants from further manufacture, importation, distribution, offering for sale, and sale of Unauthorized Monster Energy Products and to provide notice to Defendants regarding these proceedings, Plaintiff respectfully requests that the injunctive relief already awarded be extended through the pendency of this case.

Plaintiff also requests conversion of the TRO to a preliminary injunction so that Defendants’ accounts remain frozen. Since entry of the TRO, third party platforms have provided Plaintiff with information, including the identification of financial accounts linked to the Seller Aliases which were offering for sale and/or selling Unauthorized Monster Energy Products. In the absence of a preliminary injunction, Defendants may attempt to transfer financial assets to offshore accounts. Therefore, Defendants’ assets should remain frozen for the remainder of the proceedings.

The amount of damages to which Plaintiff is entitled as set forth in the Complaint far exceeds any amount contained in any of the Defendants’ frozen financial accounts. For example, Plaintiff’s prayer for relief requests statutory damages of \$2 million from each Defendant. [1]. In addition, and as established in Plaintiff’s TRO Memorandum [14], many federal courts, including the Northern District of Illinois, have granted orders preventing the fraudulent transfer of assets. *See, e.g., Lorillard Tobacco Co. v. Montrose Wholesale Candies & Sundries, Inc.*, No. 1:03-cv-04844, 2005 WL 3115892 (N.D. Ill. Nov. 8, 2005). As such, an order continuing to freeze the Defendants’ assets should be granted.

B. There is Good Cause to Extend the Temporary Restraining Order Until There is a Ruling on this Motion

In the event that the Court does not rule on this Motion before the current TRO expiration date (September 11, 2024), Plaintiff also seeks to extend the TRO to maintain the status quo until there is a ruling on Plaintiff's Motion for Entry of a Preliminary Injunction as to Certain Defendants. Rule 65 dictates that under ordinary circumstances, a temporary restraining order cannot exceed 14 days, although the court may extend it "for a like period" for good cause. Fed. R. Civ. P. 65(b)(2). However, in *H-D Mich., LLC v. Hellenic Duty Free Shops S.A.*, the Seventh Circuit affirmed that allowing a TRO to remain in effect until a decision on a motion for preliminary injunction was proper. 694 F.3d 827, 843-45 (7th Cir. 2012). In affirming the TRO extension, the Seventh Circuit explicitly recognized that there will be cases where the maximum 28-day limit does not give the parties sufficient time to prepare for a preliminary injunction hearing. *Id.* If the extension exceeds the maximum duration for a TRO under Rule 65(b), the extension "becomes in effect a preliminary injunction that is appealable, but the order remains effective." *Id.* at 844. *See also, Christian Dior Couture, S.A. v. The Partnerships, et al.*, No. 21-cv-04861 (N.D. Ill. Nov. 19, 2021) (Docket Entry 32) (further extending TRO to and including the date on which the Court would adjudicate the motion for preliminary injunction, exceeding the maximum duration for a TRO under Rule 65(b)); *Luxottica Group S.p.A., et al. v. rbzxr.com, et al.*, No. 20-cv-02297 (N.D. Ill. May 12, 2020) (Docket Entry 52) (same).

Defendants have notice of this case and this pending Motion, and have presented no evidence of hardship that would occur by keeping the TRO in place. In addition, Plaintiff respectfully submits that there is good cause to extend the TRO, since there is a high probability that the Defendants will continue to harm Plaintiff without the TRO in place, especially since Defendants have notice of this case. Specifically, Defendants will likely attempt to move any assets

from their financial accounts to off-shore bank accounts without the TRO in place while this Motion is pending.

IV. CONCLUSION

In view of the foregoing, Plaintiff respectfully requests that this Court enter the preliminary injunction as to Defendant Nos. 22-54.

Dated this 6th day of September 2024.

Respectfully submitted,

/s/ Quinn Guillermo

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